

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of RUDOLF JANSEN and DEPARTMENT OF LABOR,
OFFICE OF ADMINISTRATIVE LAW JUDGES, Cincinnati, OH

*Docket No. 02-1004; Submitted on the Record;
Issued September 5, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, ALEC J. KOROMILAS,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a one percent permanent impairment to the right leg.

The Office of Workers' Compensation Programs accepted that appellant sustained a herniated L5-S1 disc causally related to a lifting incident on August 19, 1997. By decision dated April 9, 2001, the Office issued a schedule award for a one percent permanent impairment to the right leg. In a decision dated December 17, 2001, the Office denied modification.

The Board finds the case is not in posture for decision.

Section 8107 of the Federal Employees' Compensation Act provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for the permanent impairment of the scheduled member or function.¹ Neither the Act nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants the Office has adopted the American Medical Association, *Guides to the Evaluation of Permanent Impairment* as the uniform standard applicable to all claimants.²

The Office referred appellant to Dr. Thomas Carothers, an orthopedic surgeon, for an evaluation of appellant's permanent impairment under the A.M.A., *Guides*. In a report dated January 9, 2001, Dr. Carothers opined that appellant had a one percent impairment under the 4th edition of the A.M.A., *Guides*. Dr. Carothers indicated that he applied Tables 83 and 20 to calculate the degree of L5 nerve root impairment.

¹ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

² A. George Lampo, 45 ECAB 441 (1994).

At the time of Dr. Carothers' report, the 4th edition was the appropriate edition for schedule award evaluations. As of February 1, 2001, however, schedule awards should be calculated according to the 5th edition of the A.M.A., *Guides*.³ An Office medical adviser reviewed the evidence in a report dated February 16, 2001, and concurred with Dr. Carothers that under the 4th edition the permanent impairment was one percent for L5 nerve root pain. The medical adviser did not refer to the 5th edition.⁴

The Board also notes that appellant submitted a July 11, 2001 report from Dr. Thaddeus Bort, an orthopedic surgeon, who opined that appellant had a 3.5 percent impairment for lumbosacral nerve root impairment under the 4th edition of the A.M.A., *Guides*.

Since the record does not contain any probative medical evidence with respect to a permanent impairment under the 5th edition of the A.M.A., *Guides*, the case will be remanded to the Office. On remand the Office should secure a reasoned medical report with an opinion as to appellant's permanent impairment to a scheduled member or function of the body under the proper edition of the A.M.A., *Guides*. After such further development as the Office deems necessary, it should issue an appropriate decision.

The decisions of the Office of Workers' Compensation Programs dated December 17 and April 9, 2001 are set aside and the case remanded for further action consistent with this decision of the Board.

Dated, Washington, DC
September 5, 2002

Michael J. Walsh
Chairman

Alec J. Koromilas
Member

Willie T.C. Thomas
Alternate Member

³ See FECA Bulletin 01-05 (January 29, 2001).

⁴ The Board notes that the 5th edition provides a slightly different classification scheme for grading impairments due to pain or sensory deficit from peripheral nerve disorders; see A.M.A., *Guides*, 346, Table 13-23.